

FOR THE SOUTHERN DISTRICT OF MARYLAND

FILED
U.S. DISTRICT COURT
DISTRICT OF MARYLAND

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BY _____ DEPUTY

JUDITH M. KOENICK (as a shareholder
Beneficiary), on behalf of herself,
2714 Washington Avenue,
Chevy Chase, Maryland, 20815
301-589-4104

PLAINTIFF,

V.

RWT 10 CV 0132

KENNETH D. LEWIS,
BANK OF AMERICA CORP., ET. AL.
BANK OF AMERICA CORPORATION
100 N. TRYON STREET
BANK OF AMERICA CENTER
CHARLOTTE, NORTH CAROLINA
28255

DEFENDANTS.

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MARYLAND

JUDITH M. KOENICK (as a shareholder
Beneficiary), on behalf of herself,
2714 Washington Avenue,
Chevy Chase, Maryland, 20815
301-589-4104

PLAINTIFF,

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KENNETH D. LEWIS,
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CHARLOTTE, NORTH CAROLINA
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DEFENDANTS.

COMPLAINT

The Defendant, Kenneth D. Lewis, on 12/05/08, speaking on behalf of the Board of Directors and the bank, and on behalf of MERRILL, LYNCH, PIERCE, FENNER & SMITH, INCORPORATED. ET. AL. did knowingly withhold critical information from the shareholders of record at the time of the proposed merger with MERRILL, LYNCH, PIERCE, FENNER & SMITH, INCORPORATED.

The Defendant, Kenneth D. Lewis, on 12/05/08, speaking on behalf of the Board of Directors and the bank, and on behalf of MERRILL, LYNCH, PIERCE, FENNER & SMITH, INCORPORATED. ET. AL. knowingly violated the Code Of Ethics of Bank of America Corporation when he withheld this information.

The Defendant, Kenneth D. Lewis, on 12/05/08, speaking on behalf of the Board of Directors and the bank, and on behalf of MERRILL, LYNCH, PIERCE, FENNER & SMITH, INCORPORATED. ET. AL. violated section 10b-5 of the Securities and Exchange Commission when it did knowingly withhold critical information from the shareholders of record at the time of the proposed merger with MERRILL, LYNCH, PIERCE, FENNER & SMITH, INCORPORATED.

STANDING:

All previous stated comments are incorporated and continued as part of this Civil Action.

1. The Plaintiff, Judith M. Koenick, is a life long resident of Montgomery County, Maryland and has been a shareholder of Bank of America and it predecessors going back over 50 years.
2. The Plaintiff, Judith M. Koenick, had a rather large holding in Bank of America and as a result received a substantial portion of her income from the dividend.
3. Bank of America has a multitude of offices within Montgomery County, Maryland, in which the Plaintiff, Judith M. Koenick, has conducted business, including, but not limited to: Silver Spring, Bethesda, Rockville, Chevy Chase Gaithersburg and Takoma Park.

BACKGROUND:

All previous stated comments are incorporated and continued as part of this Civil Action.

4. The Plaintiff, Judith M. Koenick, attended the special meeting of the Bank of America shareholders on 12/15/08, held in Charlotte, North Carolina.

5. The Plaintiff, Judith M. Koenick, specifically questioned the Chairman of Board of Directors and Chief Executive Office, Kenneth D. Lewis on 12/05/08, about the merits of the merger expressing concern that such a merger would dilute the shares she held and dilute the value of the shares having already seen the value of the stock drop precipitously and would further impact the financial stability of the company.

6. The Plaintiff, Judith M. Koenick, also expressed concerns that the dividend rate from \$2.56 had already been cut in half and asked about future rate cuts.

7. The Defendant, Kenneth D. Lewis, on 12/05/08, speaking on behalf of the Board of Directors and the bank, repeatedly assured everyone present that the merger was in the best interest of the shareholders and that he had no reservations about the merger.

8. The Defendant, Kenneth D. Lewis, on 12/05/08, speaking on behalf of the Board of Directors and the bank, steadfastly urged everyone to vote for the merger.

9. Based on the recommendations of the Defendant, Kenneth D. Lewis, on 12/05/08, speaking on behalf of the Board of Directors and the bank and the fact that they controlled through proxies sufficient votes to ensure the merger would be approved, the merger with

Merrill, Lynch, Pierce, Fenner and Smith was approved. In fact, persons with millions of dollars invested in Bank of America accepted the word of the Defendant, Kenneth D. Lewis , on 12/05/08, speaking on behalf of the Board of Directors and the bank and voted for the merger.

10. The merger did devalue the price of the stock and subsequent to the approval of the merger, it became known that the Defendant, Kenneth D. Lewis, on 12/05/08, speaking on behalf of the Board of Directors and the bank had deliberately deceived the shareholders in that he had withheld from the shareholders that he had serious reservation about the merger.

11. It further became known that Defendant, Kenneth D. Lewis, on 12/05/08, speaking on behalf of the Board of Directors and the bank had tried to back out of the merger but was pressured by the United States to complete the merger having been told that he would loose his job if he did not go through with the merger.

12. The value of the stock plummeted to less than \$3.00 per share and the dividend was cut to \$.01 per share.

13. As a result of the failure to disclose, Defendant, Kenneth D. Lewis, on 12/05/08, speaking on behalf of the Board of Directors and the bank, violated the Code of Ethics of Bank of America

14. As a result of the failure to disclose, Defendant, Kenneth D. Lewis, on 12/05/08, speaking on behalf of the Board of Directors and the bank, has cost the Plaintiff, Judith M. Koenick, a substantial amount of money, with the lost dividend, with the lost value of the stock and with the need to liquidate assets at a substantial loss in order to meet obligations

and other serious financial ramifications.

15. In addition, the Securities and Exchange Commission is currently investigating, Defendant, Kenneth D. Lewis, on 12/05/08, speaking on behalf of the Board of Directors and the bank, a result of the failure to disclose.

COUNT ONE

All previous stated comments are incorporated and continued as part of this Civil Action.

16. The Defendant, Kenneth D. Lewis, on 12/05/08, speaking on behalf of the Board of Directors and the bank, and on behalf of MERRILL, LYNCH, PIERCE, FENNER & SMITH, INCORPORATED. ET. AL. did knowingly withhold critical information from the shareholders of record at the time of the proposed merger with MERRILL, LYNCH, PIERCE, FENNER & SMITH, INCORPORATED thus implying that the proposed merger was in the best interest of the bank and the shareholders.

17. This lack of pertinent information and vital to the shareholders did result in the merger being approved.

18. As a result, the Plaintiff, Judith M. Koenick suffered a critical loss of assets that have had both short term and long term ramifications involving Bank of America stock.

THEREFORE, the Plaintiff, Judith M. Koenick requests that the Honorable Court award the Plaintiff, Judith M. Koenick, the sum of ten million dollars (\$10,000,000.00 dollars)

COUNT TWO

All previous stated comments are incorporated and continued as part of this Civil Action.

19. The Defendant, Kenneth D. Lewis, on 12/05/08, speaking on behalf of the Board of Directors and the bank, and on behalf of MERRILL, LYNCH, PIERCE, FENNER & SMITH, INCORPORATED. ET. AL. knew prior to the 12/05/08 special shareholders meeting to vote on the proposed merger that this was not a good deal and not in the interest of the bank and its shareholders.

20. As a result of The Defendant, Kenneth D. Lewis, on 12/05/08, speaking on behalf of the Board of Directors and the bank, and on behalf of MERRILL, LYNCH, PIERCE, FENNER & SMITH, INCORPORATED. ET. AL., the Plaintiff, Judith M. Koenick, has been unable to reduce her debts and thus has had to incur substantial interest charges and penalties with the adverse impact on her financial situation.

THEREFORE, the Plaintiff, Judith M. Koenick requests that the Honorable Court award the Plaintiff, Judith M. Koenick, the sum of ten million dollars (\$10,000,000.00 dollars)

COUNT THREE

All previous stated comments are incorporated and continued as part of this Civil Action.

21. Defendant, Kenneth D. Lewis, on 12/05/08, speaking on behalf of the Board of Directors and the bank, and on behalf of MERRILL, LYNCH, PIERCE, FENNER & SMITH,

INCORPORATED. ET. AL., **violated the Code of Ethics of Bank of America** as a result of the failure to disclose that he felt that the merger was not in the best interest of Bank of America.

22. As a result of Defendant, Kenneth D. Lewis, on 12/05/08, speaking on behalf of the Board of Directors and the bank, and on behalf of MERRILL, LYNCH, PIERCE, FENNER & SMITH, INCORPORATED. ET. AL., **violation the Code of Ethics of Bank of America**, the Plaintiff, Judith M. Koenick, subsequent deteriorating financial condition has made it impossible for the Plaintiff, Judith M. Koenick, to avail herself of the reduced interest rates of mortgages, thus requiring the Plaintiff, Judith M. Koenick, pay thousands of dollars in unnecessary interest charges each year for many years.

23. **THEREFORE**, the Plaintiff, Judith M. Koenick requests that the Honorable Court award the Plaintiff, Judith M. Koenick, the sum of ten million dollars (\$10,000,000.00 dollars)

COUNT FOUR

All previous stated comments are incorporated and continued as part of this Civil Action.

24. As a result of Defendant, Kenneth D. Lewis, on 12/05/08, speaking on behalf of the Board of Directors and the bank, and on behalf of MERRILL, LYNCH, PIERCE, FENNER & SMITH, INCORPORATED. ET. AL., **violation the Code of Ethics of Bank of America**, the Plaintiff, Judith M. Koenick, subsequent deteriorating financial condition has made it impossible for the Plaintiff, Judith M. Koenick, to continue to fund the 529 plans established

for her family members thus denying her of the tax deductions such funding would allow and impacting the ability of those family members to finance their higher education.

25. **THEREFORE**, the Plaintiff, Judith M. Koenick requests that the Honorable Court award the Plaintiff, Judith M. Koenick, the sum of ten million dollars (\$10,000,000.00 dollars)

COUNT FIVE

All previous stated comments are incorporated and continued as part of this Civil Action.

26. The Defendant, Kenneth D. Lewis, on 12/05/08, speaking on behalf of the Board of Directors and the bank, repeatedly assured everyone present that the merger was in the best interest of the shareholders and that he had no reservations about the merger. **His statements supporting the merger were fraudulent** in that he had already determined that the merger WAS NOT in the best interest of the bank and thus the shareholders.

27. The Defendant, Kenneth D. Lewis, on 12/05/08, speaking on behalf of the Board of Directors and the bank, repeatedly assured everyone present that the merger was in the best interest of the shareholders and that he had no reservations about the merger. **His statements supporting the merger were fraudulent** in that it enabled him to keep his job and salary.

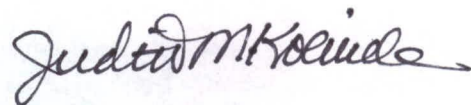
28. The Defendant, Kenneth D. Lewis, on 12/05/08, speaking on behalf of the Board of Directors and the bank, repeatedly assured everyone present that the merger was in the best interest of the shareholders and that he had no reservations about the merger. **His**

statements supporting the merger were fraudulent in that is caused irreparable harm to others, and in particular to the Plaintiff, Judith M. Koenick causing her to loose a significant portion of her income, to loose a substantial portion of her liquid assets, to be unable to avail herself of lower interest rates on mortgages, to make timely payments on other financial obligations, to continue her long standing gift giving not only to family members but to environmental, charitable and religious organizations and schools.

THEREFORE, the Plaintiff, Judith M. Koenick requests that the Honorable Court award the Plaintiff, Judith M. Koenick, the sum of twenty million dollars (\$20,000,000.00 dollars)

THEREFORE, the Plaintiff, Judith M. Koenick requests that the Honorable Court award the Plaintiff, Judith M. Koenick, a total sum of one hundred million dollars (\$100,000,000.00 dollars) in compensatory damages and punitive damages and what ever other actions of the Honorable Court, including but not limited to: all court costs, all legal fees and all additional expenses of the Plaintiff, Judith m. Koenick.

Respectfully submitted,



Judith M. Koenick
2714 Washington Avenue
Chevy Chase, Maryland 20815
301-589-4104
January 20, 2010